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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 DAVID FRANKLIN WEST,) Case No. C07-617-RSL
10)
11 Plaintiff,)
12)
13 v.)
14 WASHINGTON STATE DEPARTMENT) ORDER DISMISSING CERTAIN
OF CORRECTIONS, et al.,) DEFENDANTS AND DIRECTING
15) SERVICE BY FIRST CLASS MAIL
16 Defendants.) ON REMAINING DEFENDANTS
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15 Plaintiff David Franklin West, a former state inmate, is proceeding *pro se* and *in forma*
16 *pauperis* in his attempt to bring an amended 42 U.S.C. § 1983 civil rights claim against the
17 Washington State Department of Corrections (“DOC”), employees Rick Rosales and Joel
18 Eskes, and Washington Attorney General Rob McKenna. Dkt. No. 15. By order dated July
19 20, 2007, United States Magistrate Judge James P. Donohue declined to serve plaintiff’s
20 original complaint but granted leave to amend certain specified deficiencies. Dkt. No. 14.
21 Plaintiff’s proposed amended complaint alleges acts on the part of DOC employees including,
22 but not limited to, using excessive force while detaining plaintiff for refusing to submit to
23 urinalysis testing, which allegedly resulted in numbness and diminished use of plaintiff’s left
24 thumb and forefinger. Dkt. No. 15. After careful consideration of the amended complaint,
25 supporting materials, governing law and the balance of the record, the Court ORDERS as
26 follows:

ORDER DISMISSING CERTAIN DEFENDANTS AND
DIRECTING SERVICE ON REMAINING
DEFENDANTS

01 Rule 8(a) of the Federal Rules of Civil Procedure requires plaintiffs to submit a
02 complaint “which sets forth . . . a short and plain statement of the claim showing that the
03 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). In order to state a claim for relief under §
04 1983, a plaintiff must assert that he suffered a violation of rights protected by the Constitution
05 or created by federal statute, and that the violation was proximately caused by a person acting
06 under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991); *WAX*
07 *Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc). This requires the plaintiff
08 to allege facts showing how a specific individual violated a specific right, causing the harm
09 alleged in the plaintiff’s complaint. *Arnold v. Int’l Bus. Machs. Corp.*, 637 F.2d 1350, 1355
10 (9th Cir. 1981).

11 (1) Dismissal of State Defendant. Plaintiff has failed to correct certain
12 deficiencies outlined in the July 20, 2007 Order. *See* Dkt. No. 14. First, plaintiff seeks
13 money damages against the DOC and certain state officials acting in their official capacity.
14 Such a claim runs afoul of the Eleventh Amendment, which bars federal courts from
15 entertaining suits brought by private parties against a state or its instrumentalities absent
16 consent, waiver, or congressional abrogation. *See generally Tennessee v. Lane*, 541 U.S. 509,
17 517-19 (2004); *see also Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989)
18 (holding that Congress did not abrogate the states’ sovereign immunity by enacting § 1983,
19 and that a state, state agencies, or state officials acting in their official capacities are not
20 “persons” amenable to suit under § 1983). Here, the Eleventh Amendment presents an
21 insuperable bar to monetary relief. Accordingly, plaintiff’s allegations regarding the DOC
22 fail to state a claim for which relief may be granted and are DISMISSED pursuant to 28
23 U.S.C. § 1915(e)(2)(B)(ii).

24 (2) Dismissal of Defendants Rosales and McKenna. Plaintiff’s allegations against
25 corrections officer Rick Rosales and Washington Attorney General Rob McKenna also fail to
26 state a claim upon which relief may be granted. Plaintiff fails to allege a specific injury

ORDER DISMISSING CERTAIN DEFENDANTS AND
DIRECTING SERVICE ON REMAINING
DEFENDANTS

proximately caused by the actions of Rosales acting under color of state law. Instead, plaintiff vaguely insists that Rosales “signs off or gives the go ahead to continually violate West’[s] [c]onstitutionally [p]rotected [r]ights.” Dkt. No. 15 at 22. Similarly, plaintiff fails to allege any action whatsoever by McKenna. Plaintiff simply identifies McKenna as the corrections officers’ “Boss.” Dkt. No. 15 at 53. These allegations are insufficient. Plaintiff has not alleged facts showing that these specific defendants have violated a specific constitutional right. Accordingly, claims against defendants Rosales and McKenna are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

(3) Dismissal of “Civil Conspiracy” Claim. Plaintiff has failed allege facts amounting to civil conspiracy by the government for which relief may be granted under § 1983. For such a claim to move forward, the complaint must allege that a private defendant and government agents acted with the common understanding to deprive the plaintiff of his constitutional rights. *Adickes v. S.H. Kress & Co.*, 398 US 144, 158 (1970). Plaintiff’s allegation of civil conspiracy is extremely vague. *See Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 783-84 (9th Cir. 2001) (conclusory allegations are insufficient to state a claim of civil conspiracy). Plaintiff has merely concluded that Joel Eskes violated his constitutional rights under orders from a superior officer. Plaintiff has not alleged violation of specific rights, or that a “meeting of the minds” occurred between Eskes and his superior officer. Accordingly, this claim is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

(4) Dismissal of “Retaliation” Claim. Plaintiff’s allegation of “retaliation” also fails to state a claim upon which relief may be granted under § 1983. “‘A prisoner suing prison officials under section 1983 for retaliation must allege that he was retaliated against *for exercising his constitutional rights* and that the retaliatory action does not advance legitimate penological goals, such as preserving institutional order and discipline.’” *Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir. 2003) (emphasis added) (quoting *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam)). Such claims must be evaluated in light of the deference

01 accorded to prison officials, and the prisoner must submit evidence establishing a link
02 between the exercise of constitutional rights and the allegedly retaliatory action. *See, e.g.,*
03 *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). Here, plaintiff articulates no specific
04 right, let alone a constitutional right, serving as the basis for the alleged retaliation. Plaintiff
05 simply alleges that “Eskes and his DOC [c]o-conspirators have done . . . nothing short of
06 mak[ing] Mr. West’[s] life a total living [h]ell on [e]arth.” Plaintiff has not stated a
07 retaliation claim upon which relief may be granted and, for that reason, this claim is
08 DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

09 (5) Dismissal of “Defamation” Claim. Next, plaintiff’s vague allegation of
10 “defamation” also fails to state a claim upon which relief may be granted. Allegations of
11 defamation alone do not state a § 1983 claim. *Paul v. Davis*, 424 U.S. 693, 701-10 (1976).
12 In order to state a valid claim for defamation under § 1983, the plaintiff must allege loss of a
13 constitutional right—i.e., a property or liberty interest recognized by state law—along with
14 the alleged loss of reputation. *Cooper v. Dupnik*, 924 F.2d 1520, 1532 (9th Cir. 1991).
15 Plaintiff does not allege loss of a constitutional right and for that reason this claim is
16 DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

17 (6) Service by Clerk on Remaining Defendant. As to plaintiff’s remaining claims
18 against defendant Joel Eskes regarding urinalysis and excessive force, it is hereby ORDERED
19 that the Clerk mail him the following by first class mail: a copy of plaintiff’s complaint and of
20 this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of
21 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid,
22 addressed to the Clerk’s office.

23 (7) Response Required. The above-named defendant shall have **thirty (30) days**
24 within which to return the enclosed Waiver of Service of Summons. Any defendant who
25 timely returns the signed Waiver shall have **sixty (60) days** after the date designated on the
26 Notice of Lawsuit to file and serve an answer to the Complaint or a motion permitted under

01 Rule 12 of the Federal Rules of Civil Procedure.

02 Any defendant who fails to timely return the signed Waiver will be personally served
03 with a summons and Complaint, and may be required to pay the full costs of such service,
04 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or
05 motion permitted under Rule 12 within **thirty (30) days** after service.

06 (8) Filing and Service by Parties, Generally. All attorneys admitted to practice
07 before this Court are required to file documents electronically via the Court's CM/ECF
08 system. Counsel are directed to the Court's website, www.wawd.uscourts.gov, for a detailed
09 description of the requirements for filing via CM/ECF. All non-attorneys, such as *pro se*
10 parties and/or prisoners, may continue to file a paper original of any document for the Court's
11 consideration. **A party filing a paper original does not need to file a chambers copy.** All
12 filings, whether filed electronically or in traditional paper format, must indicate in the upper
13 right hand corner the name of the Judge to whom the document is directed.

14 Additionally, any document filed with the Court must be accompanied by proof that it
15 has been served upon all parties that have entered a notice of appearance in the underlying
16 matter.

17 (9) Motions. Any request for court action shall be set forth in a motion, properly
18 filed and served. Pursuant to amended Local Rule CR 7(b), any argument being offered in
19 support of a motion shall be submitted as a part of the motion itself and not in a separate
20 document. **The motion shall include in its caption (immediately below the title of the**
21 **motion) a designation of the date the motion is to be noted for consideration upon the**
22 **court's motion calendar.**

23 Stipulated and agreed motions, motions to file overlength motions or briefs, motions
24 for reconsideration, joint submissions pursuant to the option procedure established in Local
25 Rule CR 37(a)(2)(B), motions for default, requests for the clerk to enter default judgment,
26 and motions for the court to enter default judgment where the opposing party has not

01 appeared shall be noted for consideration the same day they are filed. *See* Local Rule CR
02 7(d)(1). All other non-dispositive motions shall be noted for consideration no earlier than the
03 third Friday following filing and service of the motion. *See* Local Rule CR 7(d)(3). All
04 dispositive motions shall be noted for consideration no earlier than the fourth Friday
05 following filing and service of the motion.


06 For electronic filers, all briefs and affidavits in opposition to either a dispositive or
07 non-dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
08 immediately preceding the date designated for consideration of the motion. If a party files a
09 paper original (i.e., a *pro se* and/or prisoner), that opposition must be received in the Clerk's
10 office by 4:30 p.m. on the Monday preceding the date of consideration. If a party fails to file
11 and serve timely opposition to a motion, the court may deem any opposition to be without
12 merit.

13 Additionally, the party making the motion may file and serve, not later than 11:59
14 p.m. (if filing electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office)
15 on the judicial day immediately preceding the date designated for consideration of the
16 motion, a response to the opposing party's briefs and affidavits.

17 (10) No Direct Communications with District Judge or Magistrate Judge. No
18 direct communication is to take place with the United States District Judge or Magistrate
19 Judge with regard to this case. All relevant information and papers are to be directed to the
20 Clerk.

21 (11) The Clerk is directed to send a copy of this Order to the plaintiff and the
22 Honorable Robert S. Lasnik.

23 DATED this 25th day of September, 2007.

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25 
26 Robert S. Lasnik
United States District Judge

Recommended for entry this
24th day of September, 2007.

s/ JAMES P. DONOHUE

United States Magistrate Judge

ORDER DISMISSING CERTAIN DEFENDANTS AND
DIRECTING SERVICE ON REMAINING
DEFENDANTS

PAGE - 7